

REMARKS

This is in full and timely response to the Office Action mailed on November 10, 2009.

Reexamination in light of the following remarks is respectfully requested.

1 Restriction Requirement

The Restriction Requirement of November 10, 2009 asserts an existence of the following species:

- ◆ Specie 1: figure 5
- ◆ Specie 2: figure 9

2 Election

The Applicant, through its representatives and attorneys, hereby provisionally elects, WITH traverse, the invention of the alleged Specie 1: figure 5, having claims 1-14 readable thereon.

3 Traversal

For the reasons provided hereinbelow, the Restriction Requirement made within the Office Action mailed on November 10, 2009 is respectfully traversed.

3.1 The Restriction Requirement is based upon 35 U.S.C. §121 and not under the principles of unity of invention.

The above-identified application is an application under 35 U.S.C. §371.

The above-identified application was filed under 35 U.S.C. §371 and 37 C.F.R. §§1.494 or 1.495, being based upon international application No. PCT/JP2005/015350.

Accordingly, M.P.E.P. §1893.03(d) provides that the *principles of unity of invention* are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application.

Unity of invention, *not restriction practice*, is applicable in international applications and in national stage (filed under 35 U.S.C. §371) applications.

However, the Restriction Requirement made by the Examiner in the Office Action of November 10, 2009 is *based upon 35 U.S.C. §121 and not under the principles of unity of invention.*

Thus, the Restriction Requirement is *improper* at least for this reason.

3.2 The Restriction Requirement *fails* to either (1) list the different groups of claims or (2) explain why each group lacks unity with each other group.

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group. M.P.E.P. §1893.03(d).

However, the Restriction Requirement of November 10, 2009 *fails* to either (1) list the different groups of claims or (2) explain why each group lacks unity with each other group.

Thus, the Restriction Requirement is improper at least for this reason.

4 Relief

Withdrawal of this Restriction Requirement and examination of all pending claims is respectfully requested.

An early Action on the merits of this application is additionally respectfully requested.

5 Extensions of time

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

6 Fees

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

7 Conclusion

This response is believed to be a complete response to the Office Action. Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

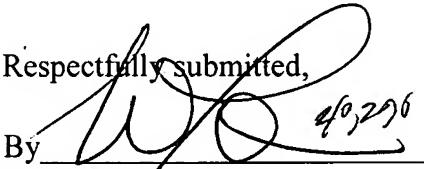
For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance.

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: December 8, 2009

Respectfully submitted,

By 

Christopher M. Tobin

Registration No.: 40,290

Brian K. Dutton

Registration No.: 47,255

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

Attorney for Applicant